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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 109 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

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NAJIR GAFURBHAI GHANCHI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 109 of 1991
MR SK BUKHARI for Petitioner No. 1
MR ND GOHIL, ADDL.PUBLIC PROSECUTOR for Respondent No. 1
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CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 16/08/2001

ORAL JUDGEMENT

The appellant accused has challenged in this appeal the judgement and order of conviction and sentence dated 31.1.1991 passed by the learned Special Judge,

Court No.4, Ahmedabad, whereby he convicted the accused for the offence under Section 7 of the Essential Commodities Act and imposed minimum sentence of 3 months RI.

The learned Counsel Shri Bukhari for the appellant accused vehemently submitted that in the instant case the evidence of complainant and panch witness was not at all reliable. There were material contradictions in their evidence and there was correction in the complaint regarding number of auto-rickshaw and the time and in such type of matters, the learned Judge should have been given benefit of doubt. He, therefore, submitted that the impugned judgement and order dated 31.1.1991 passed by the learned Special Judge may be quashed and set aside. However, learned APP submitted that even if there are minor discrepancies in their evidence, this Court should not interfere with the order of conviction and sentence passed by the trial Court. He submitted that the learned Judge has rightly relied upon the evidence of the prosecution witness and convicted the accused under Section 7 of the Essential Commodities Act.

Complainant Abdul Hameed Abdulgafoor - P.W 2
Ex.31 has stated in his cross-examination that ordinarily service timings in a Traffic Branch are from 8.30 A.M to 12.30 noon and 4.30 P.M to 8.30 P.M. He had filed two cases on 22.12.1989 against two auto-rickshaws and another PSI who was alongwith him had filed four cases. According to him, he had first written rickshaw No. GRX 2831 driven by the appellant accused, thereafter, another rickshaw came within 5 minutes. According to him, the experts of FSL took the sample of petrol and they added some chemical, but he is not in a position to name it. He left his office at Bhadra, Ahmedabad at 5.00 P.M for going to Paldi Circle alongwith his writer Constable and two experts of FSL and two other PSIs. It takes about 15 to 20 minutes for reaching Paldi Circle from his office. He has denied the suggestion made to him in his cross-examination that later on he corrected auto-rickshaw number from GRY to GRX. He has also denied the suggestion that after lodging FIR, he had changed the timing in the complaint. He has stated that after reaching Paldi Circle he called panchas.

Babulal Mohanlal P.W 1 Ex.5 is a panch witness. He has stated in his evidence that at 6.00 P.M he was called by Police Jamadar at Paldi Circle. Alongwith him another panch Jayeshbhai was there. He was not aware that from which side auto-rickshaw No. GRX 2831 came. He was not able to identify accused Najir Gafoorbhai

because he had not seen him since long. In his cross-examination he has stated that he is having small cabin at a distance of half a mile from Paldi circle, wherein he is selling lottery tickets. He was not able to give the names of those Police persons who had come to call him to become pancha. According to him he walked down the distance from his cabin to Paldi circle within 5 minutes. Panchnama was written by Jamadar and after completing the same his signature was taken, but he is not aware about the timings when it commenced and at what time it was completed. When the Police came to call him, number of persons were present at Paldi circle, but he was not able to give their names. He has clearly admitted in his cross-examination that in his present test was not carried. He has also not read the seal fixed in the bottle in which the muddamal sample was taken. He has also admitted in his cross-examination that on the date of the incident he had signed on 3 to 4 papers.

Laljibhai Talsibhai, Jamadar who has carried out the investigation is P.W 3 Ex.9. According to him, his service hours were from 8 P.M to 8.00 AM on the next day and on 22.12.1989, he was entrusted with two accused. Sample bottle was given to PSO, which he had not seen on 22.12.1989.

From the aforesaid evidence of the prosecution witnesses it is clear that there is a major discrepancy about the timing between the complainant A.A. Sarjahani and panch witness Babulal. From the original record perused by me, it is clear that there is an over-writing of auto-rickshaw No. GRX instead of GRY. Similarly, there is an over-writing regarding timings of 5.15 P.M. It is true that there is a discrepancy regarding 45 minutes between the evidence of the complainant and the panch witnesses, which could have been otherwise ignored but in view of the over-writing made not at one place, but two places in the complaint by the complainant raises reasonable doubt in the mind of the Court. As per the evidence of the complainant A.A Sarjahani, when they went there the panchas were very much present which is falsified by the evidence of panch witness. Above this, Laljibhai had never seen the sample bottle on the date of the incident i.e. on 22.12.1989.

In this view of the matter, I am of the considered opinion that the learned Judge has committed an error in placing implicit reliance upon the evidence of the complainant, panch witness and the IO. When number of independent witnesses were there, there was no

reason for the complainant to select a panch who was having his cabin at a distance of half a mile from the place of incident. No independent witness is examined in this case. In that view of the matter, I am of the considered opinion that the learned Judge was wrong in convicting the accused for the offence under Section 7 of the Essential Commodities Act.

In view of the above discussion, this appeal is allowed. The judgement and order of conviction and sentence passed by the learned Special Judge, Court No.4, Ahmedabad in Special Case No. 50 of 1990 convicting the respondent accused for the offence under Section 7 of the Essential Commodities Act and sentencing him suffer 3 months RI is hereby quashed and set aside. The accused is on bail. His b

(B.J.Shethna, J.)

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